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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 85-157-C - ORDER NO. 85-813
September 20, 1985

IN RE: Application of PalmettoNet, Inc., for)
a Certificate of Public Convenience)
and Necessity to Provide Intrastate)
Interexchange Telecommunications Ser-) ORDER GRANTING
vices.) CERTIFICATE

I.

INTRODUCTION

This matter comes before the South Carolina Public Service Commission (hereinafter "the Commission") by way of an Application, filed on May 28, 1985 by PalmettoNet, Inc. (hereinafter "PalmettoNet" or "the Applicant"), whereby the Applicant seeks a Certificate of Public Convenience and Necessity to construct, own and operate an intrastate interexchange fiber optic telecommunications network in South Carolina. The Application was filed pursuant to S.C. Code Ann., Sections 58-9-280 and 58-9-520 (1976), as amended.

Subsequent to receipt of the instant Application, the Commission's Executive Director instructed the Applicant to cause to be published a prepared Notice of Filing once a week for two consecutive weeks in newspapers of general circulation in the affected area. The Notice was also published in the State Register. Additionally, the Applicant was instructed to certify that all other notifications required by statute were made.

Subsequently, the Applicant furnished Affidavits of Publication and Affidavits of Mailing, indicating compliance with the instructions of the Commission's Executive Director.

Petitions to Intervene were filed by the following: Southern Bell Telephone and Telegraph Company (hereinafter "Southern Bell"), and Telecommunications Systems, Inc. (hereinafter "TSI").

Thereafter, a public hearing was commenced before the Commission on September 12, 1985, the Honorable Fred A. Fuller, Jr., Chairman, presiding. M. John Bowen, Jr., Esquire appeared on behalf of the Applicant; Fred A. Walters, Esquire appeared on behalf of Southern Bell; C. Dukes Scott, Esquire appeared on behalf of TSI; and Sarena K. Dickerson, Esquire appeared on behalf of the Commission. Testimony was presented by Frank S. Barnes for the Applicant, by David B. Denton on behalf of Southern Bell, and by Oscie O. Brown on behalf of TSI.

II.

THE APPLICANT

PalmettoNet is a South Carolina corporation and has its office and principal place of business in Rock Hill, South Carolina.

PalmettoNet seeks authority to become an Intrastate interexchange facilities-based carrier operating in the State of South Carolina. The Applicant will construct, own (and lease) and operate a fiber optic telecommunications network linking major commercial and population centers within South Carolina, and will

reach other areas of each state by means of the technology appropriate to the circumstances. The Applicant will make available to the public transmission capacity through non-switched, point-to-point, private line services on a carrier's carrier basis.

Under a Certificate of Public Convenience and Necessity issued by this Commission, a modern transmission network utilizing primarily fiber optic technology will be constructed for the purpose of providing service. The fiber optic cable and related electronic equipment will be installed in segments which will become operational in stages as completed. As each segment of the transmission network becomes operational the Applicant will offer non-switch, point-to-point, private line services on a "carriers' carrier" basis.

Testifying on behalf of the Applicant was Frank Barnes, Jr., Chairman & Chief Executive Officer of PalmettoNet. Mr. Barnes said that the Applicant plans, to the maximum extent possible, to utilize its own system to provide service. At all times, however, the Applicant may use facilities and services of other common carriers, to provide service to those sections of South Carolina where the Applicant does not construct its own system.

According to Mr. Barnes, the Applicant is in a strong cash position to carry forward its construction program. It appears from Hearing Exhibit 1, PalmettoNet's financial statement, that PalmettoNet can adequately finance the construction of the

proposed system from such financial resources and if need be, obtain additional financial assistance to enable PalmettoNet to meet its construction program and service objectives.

Mr. Barnes testified that the Applicant will be a "carrier's carrier." The Applicant will not provide service to end users but only to certificated carriers in South Carolina. Mr. Barnes also stated that the Applicant will only provide service to interexchange carriers (IXCs) to the extent that such carrier's respective authority allowed, i.e. the grant of authority to PalmettoNet would not and should not expand that authority granted such IXCs by the Commission. Further that if any IXC took service from PalmettoNet, such service would have to be consistent with his grant of authority from the Commission. Since the Applicant will have no individual subscribers, it did not submit any public need witnesses.

III.

THE INTERVENTION

David B. Denton, Segment Manager - Rates, testified on behalf of Southern Bell. Mr. Denton said that Southern Bell did not object to the issuance of the authority being requested by PalmettoNet as long as it is stipulated that PalmettoNet would not provide provide direct connections between its Points of Presence (POP) and a customer/carrier's POP unless: (1) the two POPs are located in a contiguous property; i.e., the same or adjacent building; and (2) the local exchange company, upon

reasonable notice, cannot timely provide the required facilities in a reasonable period of time at a competitive rate.

PalmettoNet, through its Counsel and witness Barnes agreed to the positions requested by Southern Bell and the Commission finds them to be appropriate.

Oscie O. Brown, III, Director of Rates and Tariffs, testified in behalf of TSI. Mr. Brown testified in support of the Application in PalmettoNet's seeking Intrastate Interexchange authority to provide non-switched, point-to-point, private line services to carriers who have been authorized by the Commission, the Federal Communications Commission, or otherwise authorized by law to provide telecommunications services to the public or a portion thereof.

IV.

DISCUSSION

The preceding sections of this Order have summarized testimony which, in the Commission's opinion, clearly established that PalmettoNet has the technical, managerial and financial resources to provide its proposed intrastate offerings in South Carolina. Having determined this, the Commission must determine whether the public interest will be served by granting PalmettoNet's Application for statewide authority.

This Commission has had cause to review again in four recent cases involving interexchange carriers, MCI, GTE Sprint, USTS, and SouthernTel, Inc., the standards for the granting of

Certificates and the type of regulation which should be applied to certain interexchange carriers. See, Order No. 84-622, Order No. 84-732, Order No. 84-1006, and Order No. 85-345, supra. The Commission has found in these cases that competition in the provision of interLATA interexchange services promotes responses to the demands of the public for new and improved services at the lowest reasonable prices and is therefore in the public interest. The rationale for allowing these carriers the authority to provide interLATA services is fully set forth in the recent orders above cited, and the Commission sees no need to reiterate that discussion herein or depart from any of the findings or conclusions reached therein in the instant case concerning PalmettoNet.

This Commission has likewise reviewed the case of interexchange carrier TSI and the authority granted that carrier which was Intrastate in scope and further reviewed the Intrastate scope of this Application. (See Order No. 82-3.)

The Commission has reviewed the record in this case and so finds that all Intrastate interexchange carriers, be they IntraLATA or InterLATA should have the opportunity to avail themselves of the services of PalmettoNet and therefore we find that the certificate should be Intrastate in nature. PalmettoNet shall insure that the carriers it serves hold the appropriate interLATA or intraLATA certificate prior to serving such carriers.

By this Order, we, of course, reaffirm the finding that S.C. Code Ann., Section 58-9-280 (1976), as amended, requires the investigation and certification of any prospective intrastate carrier. PalmettoNet furnished testimony that the Company will be furnishing service to other telecommunication carriers pursuant to written agreements. It was further testified that because of the competitive market in which PalmettoNet would be engaged, great flexibility in dealing with its customers was going to be needed in furnishing service. PalmettoNet requested that rather than furnishing tariffs to the Commission, as is normally required of telecommunications carriers that provide service to the end user or telephone subscriber, that PalmettoNet provide copies of its standard agreement for service. The Commission is of the opinion that while realizing the confidential and proprietary nature of such agreements, such individual contracts should be filed with the Commission. This Commission will seal such contracts and treat them as proprietary.

The Commission also finds that the certificate should be restricted to the provision of the service to intrastate inter-exchange long distance telecommunications carriers authorized by the Commission or the FCC to provide telecommunications services in South Carolina.

Nothing contained in this Order changes the Commission's

finding in Docket No. 84-249-C, Order No. 85-33, dated January 16, 1985, that:

All facilities based carriers holding intrastate interLATA authority only from this Commission, are authorized to resell intraLATA WATS service for completion of intraLATA calls over intraLATA WATS lines provided by intrastate intraLATA carriers. Also, these facilities based carriers cannot use Feature Groups A,B,C, or D, or their facilities to complete intraLATA calls.

The provision of telecommunication services by interexchange carriers and resellers using facilities obtained from PalmettoNet shall be deemed to be the provision of services using such interexchange or reseller's facilities and not the resale of such services.

VI.

FINDINGS AND CONCLUSIONS

Based upon the foregoing considerations, and after a full review and evaluation of the record in the instant proceeding, the Commission has made the following findings and reach the following conclusions:

1. That PalmettoNet has satisfied the requirements of the standards for the issuance of a Certificate of Public Convenience and Necessity by the Commission.
2. That PalmettoNet has the technical, managerial and financial resources to provide its proposed intrastate services in the State of South Carolina.

3. That the certification of PalmettoNet to provide its proposed intrastate interexchange services will not cause a wasteful duplication of facilities nor will it produce inadequate services to the public of South Carolina.

4. That PalmettoNet should be issued a Certificate of Public Convenience and Necessity to provide intrastate exchange telecommunications services in accordance with S.C. Code Ann., Section 58-9-820 (1976), as amended.

5. That competition among telecommunications carriers promotes better service at lower prices for the consumer.

6. That PalmettoNet shall operate under a general regulatory structure as set out above that will permit considerable flexibility in the implementation of rates and charges to allow carriers to operate effectively in the competitive environment.

7. That this general regulatory structure was created under the dictates of the statutory requirements which must prevail in the conduct of regulation.

8. That in order for the Commission to effectively regulate all intrastate carriers, PalmettoNet must keep sufficient records as required by law and this Commission.

9. That PalmettoNet must abide by all of the applicable rules and regulations of the Commission.

10. That PalmettoNet's certificate is restricted to the provision of the service to intrastate interexchange

telecommunications carriers authorized by the Commission or the FCC to provide telecommunications services in South Carolina.

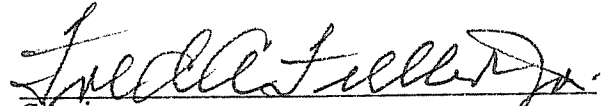
IT IS THEREFORE ORDERED:

1. That PalmettoNet is granted a Certificate of Public Convenience and Necessity to provide intrastate interexchange telecommunications services on a carrier's carrier basis within the State of South Carolina.
2. That PalmettoNet is required to operate under the regulatory framework as set out in this Order.
3. That PalmettoNet must keep appropriate records as required by law and this Commission.
4. That PalmettoNet must abide by the Rules and Regulations of the Commission.
5. That PalmettoNet's certificate is restricted to the provision of the service to intrastate interexchange telecommunications carriers authorized by the Commission or the FCC to provide telecommunications services in South Carolina.
6. That PalmettoNet file its executed contracts with customer carriers within thirty days of execution.

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7. That this Order shall remain in full force and effect
until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)